

## THE FITTS CHARGES

(Continued from page 1.)

erty in Brattleboro, as shown by the records, of several thousand dollars and that any one having any obligations of any character against him might have secured it at any time during the last six years had he so chosen. This respondent avers that no man now or heretofore directly or indirectly connected with the liquor traffic in any way holds any unpaid obligation of any character or kind against him.

This respondent further answering says that the facts concerning the two foregoing matters of complaint are generally and well known in Brattleboro and have been for many years; that right said Smith and Hunt have openly, and publicly told of the said collection matter against them; that the said suit of August 22, 1905, in said case, and all the details thereof, were published and discussed in both the local papers of Brattleboro at the time; that there never has been any concealment or attempted concealment of the facts thereof on the part of this respondent and that he understands and believes that most of the complainants have known in general about these two matters for the last seven or eight years.

Wherefore, this respondent, from all the foregoing, claims that the said complainants in making complaint against him check and said collection, which occurred so long ago, and were settled and disposed of are not justified in bringing this proceeding at this time.

Your respondent, answering the allegation in the affidavit of Fred C. Gale, filed with this petition, denies the same in toto and declares that it is absolutely false.

## 3. The D. P. Prescott Matter.

This respondent, answering relative to the D. P. Prescott matters, says that he was employed by said Prescott as counsel in the suit of Bartlett vs. Prescott commencing in December, 1904, and from thence up to the April term, 1905, in Windham county court. He avers that during the whole progress of said case and all the questions arising therein he acted in good faith for the best interests of his client, as he believed, and with the sole purpose of protecting the interests of his client, said Prescott, in everything about said case; that he never intended or did anything to prejudice the interests of his client, but with all his zeal and ability worked for the said client's interest; that he brought suit of Crown & Bailey vs. Bartlett upon a promissory note of said Bartlett and trusted said Prescott as alleged in complaint, but did so with the thorough understanding between all parties interested that as between Crown & Bailey and Prescott his first service and duty was to Prescott; that there never was secured any judgment against said Prescott as trustee in said Crown & Bailey suit; that judgment was rendered in favor of said Crown & Bailey against Bartlett, the plaintiff, in the September term of 1903 of Windham county court, but that said case was then and always thereafter continued as to trustees until the termination of the Bartlett vs. Prescott suit when the Crown & Bailey suit was settled; that this respondent's employment and action taken in the Crown & Bailey suit were approved by said Prescott, was known to him and other counsel associated with the respondent for said Prescott during the entire time of the litigation, and was known to the court; that all the same was in good faith; that this respondent never acted in a dual capacity therein, but always with the sincere purpose of first securing the rights of said Prescott in the Bartlett case. This respondent denies that he owned the claim or judgment of Crown & Bailey vs. Bartlett or any interest therein and he denies that any liability he was under for said Bailey in any way had to do with or influenced his action in the Bartlett vs. Prescott case. This respondent avers that soon after the beginning of the said case of Bartlett vs. Prescott another attorney, A. F. Schwab, of Brattleboro, was employed by said Prescott as counsel therein with the respondent and thenceforward acted with him as such counsel and was privy to all moves made by counsel including said trustee suit and all that was done for and in behalf of said Prescott, and that later in the case another attorney, John E. Gale, of Guilford, was likewise employed by said Prescott and thenceforward said Gale was always privy to all that was done in and about said suits; that on different times during the progress of said case Prescott employed other counsel, to wit, John H. Senter of Montpelier, and Elisha May of St. Johnsbury.

This respondent further answering, without going into detail, denies each and every one of the allegations of unprofessional conduct set forth in the affidavit of said D. P. Prescott filed with this complaint, and denies that there was ever any neglect, indifference, collusion, fraud or wrong doing of any character on his part in and about the matters of said Prescott in any way, shape or form. This respondent, further answering, says that something a year or a year ago he learned that said Prescott had made some statements charging this respondent with being unfaithful to him in said litigation and that he had acted in a dual capacity and that thereupon the said Prescott not having paid and settled the respondent's account against him for services in said case, he demanded settlement of said Prescott, giving him notice that if the settlement was not made he, this respondent, would sue Prescott therefor because of the statements which said Prescott had made as aforesaid, and in order to give said Prescott an opportunity to make defense against said account on said grounds; that Prescott refused to pay and thereupon the respondent brought suit against him; that judgment to account thereon was rendered April term, 1905, of Windham county court and an auditor appointed and that hearing was had thereon before A. W. Butler, the auditor appointed by the court to hear and determine the same, at Newfane September 1, 1905. Mr. Prescott was present with counsel, evidence on both sides was produced, Prescott defending said suit on the grounds that the respondent had been unfaithful to him and had acted in a dual capacity and, after hearing the parties and their evidence and counsel, the auditor made his report to the court, the substance of which relative to the matter of said defense is as follows: "Evidence of both sides shows that Mr. Fitts sued Mr. Bartlett and trusted Mr. Prescott with others, but it also shows that Mr. Prescott became informed of that fact and was told by Mr. Fitts that he would protect Prescott's interests in the trustee process in preference to those of the other clients and the other clients so understood; that Mr. Prescott still retained Mr. Fitts. . . . I find that Mr. Fitts was not acting in a dual capacity as claimed by the defendant; that Mr. Fitts did not because of the suit in which Mr. Prescott was trusted with others endanger Mr. Prescott's interests in the Bartlett case, also that Mr. Fitts's charges were in all respects reasonable and just for the work performed and that said work was well and faithfully done." Under said report judgment was rendered for this respondent, to recover of Prescott the full amount claimed by this respondent, that no action was ever made by Prescott on his counsel to set aside or recommit said report or have rehearing and that no objection was made or exception taken to said judgment.

Wherefore, this respondent avers that he has given said Prescott every opportunity by due process of law to make, prove and substantiate the charges he now makes against him; that in said suit Prescott undertook to do so and failed, and the respondent avers that by reason of a judgment of said court and the charges of said Prescott have as between him and said Fitts been judicially determined and ended; yet the respondent is ready at the direction of this court to submit all the same again to the finding and determination of any tribunal which in the premises shall seem meet and proper in the premises.

Now the respondent avers that the pendency of these charges against him is of great harm and injury to him, his reputation, his business, and further for the reason that the service which he owes to the state of Vermont is, pending these charges, seriously impaired; therefore he prays that the court take speedy action in the premises to have the charges passed upon and determined, to have such facts found as may to the court seem necessary and for final judgment of this court as to whether said petition ought to be granted, and as in duty bound will ever pray.

## Mr. Spellman in Brattleboro.

Mr. Spellman came to Brattleboro Friday afternoon, and in the evening he talked the matter over with Daniel Prescott and Fred C. Gale at the Brooks House. Mr. Spellman spent a large part of Saturday with Prescott and left for his home on the 6:30 train in the evening. Just before leaving he was seen by a representative of The Phoenix, who told him of a current rumor to the effect that the signers of the petition were actuated solely by a desire to discredit Mr. Fitts in order to "get even" with him on personal grounds, to pay off old grievances, and that having accomplished their purpose in getting the matter into the newspapers they would do nothing further.

At this Mr. Spellman waxed eloquent and said: "That would be the work of a blackguard. I would not be a party to such a thing. I would rather beg from door to door for a crust of bread. Mr. Fitts and I are good friends and personally I know of not a single thing against him. I simply am going where duty calls me, and I would not take hold of the case unless I thought there was some merit in the charges."

Reference was made to the fact that the supreme court returned the petition as not having been accompanied by affidavits of proof and Mr. Spellman was asked if the object of his visit to Brattleboro was to secure those affidavits. His reply was, "O, I'm just browsing around." When asked if the petition would be presented again to the supreme court he answered: "Sink or swim, live or die, the petition will be pushed to completion. I have no doubt but that the signers will return it to the court in due time."

Mr. Spellman was asked what the allegations against Mr. Fitts were and who stood behind them, but he would not give the desired information. "I don't think it would be courteous to the court or the petitioners," said he, "to give out the things before the court has had an opportunity to consider the matter."

## Press Comments.

This is the way the St. Albans Messenger looks at the case: "If John D. Spellman proves to the satisfaction of the supreme court of Vermont that Attorney General Clarke C. Fitts is guilty of irregularities in his professional work, probably no one will be more surprised than John D. Spellman." "In another issue the Messenger says: "Of course the press cannot afford to prejudice the charges of irregularities in professional conduct that have been preferred against Attorney General Clarke C. Fitts, but there does not appear to be manifest anywhere throughout Vermont any great amount of apprehension that a state official is about to be disgraced."

The Barre Times says: "If Attorney John D. Spellman of Rutland and those Brattleboro men who brought the petition, charging irregularities, against Attorney General Clarke C. Fitts, have anything against that official they will lose no time in having their petition properly sworn to and again presented to the supreme court. If they have nothing more than petty spite to work out they will probably try to return to private life and allow the matter to drop. In case the petition in its proper form is not again presented to the court citizens of Vermont will set the cast down as very trivial."

The shadow of a dangling skeleton on a window shade created great excitement in a London street the other night. An inquiring policeman learned that an ambulance doctor was delivering to a roomful of railway employees a lecture on first aid.

**TO CURE A COLD IN ONE DAY**  
Take Laxative Broom Quinine Tablets. Drug stores sell them. If it fails to cure, Dr. W. G. GROVES' signature is on each box. 25c.

**Poultry Food Agents Wanted.**  
Agents everywhere to sell Page's Perfected Poultry Food. If it is not for sale in your village, write the manufacturer, C. S. Page, Hyde Park, Vt., for terms to agents. Agents take no risk, as the food is guaranteed to give entire satisfaction in every case, and any not sold may be returned. It is an article of genuine merit, and can be conscientiously commended to poultrymen.

## A Card.

To all who have these many years brought one ray of sunshine to the life of my suffering son, in a London street the other night. I wish to return my heartfelt thanks. May the loving Father be a present help to them in all times of need.

MRS. A. J. STERNES.  
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